IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12652 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GONDAL NAGARPALIKA - Petitioner(s)

Versus

RAJENDRA KANTILAL MODASARA C/O PL JOTANGIA - Respondent(s)

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Appearance :

MR SUNIL C PATEL for Petitioner No(s).: 1.

RULE SERVED for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 09/08/2005

ORAL JUDGMENT

1. Heard Mr.Sunil Patel, learned Counsel for the petitioner. None appears for the respondent.

2. Mr.Patel submitted that pursuant to the order of the Labour Court, the respondent was called for duty, but he has

not resumed duty and in that view of the matter, the order of reinstatement could not be implemented.

3. Though served, none appeared for the respondent. In that view of the matter, the statement made by the petitioner is accepted and it is presumed that the respondent has abandoned work and there is no retrenchment and the order of the Labour Court cannot be implemented. Mr.Patel for the petitioner states that the Labour Court has directed that the respondent be reinstated in service on his original post with continuity and with 50% backwages.

4. The law on the subject is already settled. In the case of Ram Ashrey Singh vs. Ram Bux Singh, reported in (2003) LLJ 176, it is held that the workman had no automatic entitlement to backwages since it is discretionary and has to be dealt with in accordance with facts and circumstances of each case. In the case of General Manager, Haryana Roadways vs. Rudhan Singh, reported in JT 2005 (6) SC 137, it is held that order for payment of backwages should not be passed in mechanical manner but a host of factors are to be taken into consideration before passing any such order. In that view of the matter, the petition is allowed. The order of the Labour Court is quashed and set aside. Rule is made absolute. No order as to costs.

(K.S.Jhaveri, J.)

Sreeram.